

Rev. Rul. 83-19, 1983-1 C.B. 115, amplifying [Rev. Rul. 73-571](#)

Charitable remainder trust; university trustee; commingling assets with general endowment fund. The investment by a university, as trustee, of the assets of charitable remainder trusts in its general endowment investment fund will not jeopardize the exempt status of the charitable remainder trusts or the donor's charitable contribution deductions. Rev. Rul. 73-571 amplified.

ISSUE

Will the exempt status of the charitable remainder trusts or the donors' charitable contribution deductions be jeopardized if a university, as trustee, invests the assets of charitable remainder trusts through the university's general endowment fund?

FACTS

A, a university, is an educational institution described in section 170(c) of the Internal Revenue Code. As a result of a major capital fund-raising campaign A is the trustee and remainder beneficiary of several charitable remainder trusts as described in section 664(d) of the Code.

In its capacity as trustee A commingles the assets of several charitable remainder trusts with the assets of A's general endowment fund for purposes of investment. In none of the trusts does the donor or any individual beneficiary have any control over the investment decisions made with respect to the trusts. There are no restrictions in the instruments as to the manner in which the trustee may invest the assets.

LAW AND ANALYSIS

Under section 170(f) of the Code, in the case of property transferred in trust, no deduction shall be allowed for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (as described in section 664).

Section 664(c) of the Code provides that charitable remainder trusts shall, for any taxable year, not be subject to any tax imposed by subtitle A of the Code, unless such trust, for such year, has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust).

Under section 664(d) of the Code, charitable remainder trusts include charitable remainder annuity trusts and charitable remainder unitrusts. Generally, a charitable remainder trust is a trust that provides for a specified distribution, at least annually, to one or more beneficiaries, at least one of which is not a charity, for life or for a term of years, with an

irrevocable remainder interest to be held for the benefit of, or paid over to, charity. Section 1.664-1(a)(1)(i) of the Income Tax Regulations. Section 1.664-1(a)(3) of the regulations provides that a trust is not a charitable remainder trust if the provisions of the trust include a provision that restricts the trustee from investing the trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

The legislative history of section 664(d) of the Code indicates that it was the intent of the Congress to assure that the amount received by the charity will accord with the charitable deduction allowed the donor on the creation of the trust by removing any incentive in the trustee to favor the income beneficiaries over the remainder beneficiaries by means of manipulating the investments. The amount the beneficiary receives each year must be either a stated dollar amount or a fixed percentage of the value of the trust property each year, in which case the amount the income beneficiary receives will vary directly with the type of investment made by the trust. See H.R. Rep. No. 91-413, Part 1, 91st Cong., 1st Sess. 58 (1969), 1969-3 C.B. 200, 238. Thus, it is imperative that the trust be able to invest the assets of the trust in a manner that will benefit both the income beneficiary and the remainderman; and section 1.664-1(a)(3) of the regulations so provides.

In Rev. Rul. 73-571, 1973-2 C.B. 213, the Service holds that the investment by a bank of the assets of a trust treated as a charitable remainder unitrust in common trust funds maintained by the bank will not jeopardize either the exempt status of the charitable remainder unitrust or the donor's charitable contributions deduction.

Under the facts of this revenue ruling, the trustee is allowed to invest trust funds freely, and the trustee has an obligation because of fiduciary duty to invest the assets in a manner that will benefit all the parties.

HOLDING

The investment by A of assets of trusts treated as charitable remainder unitrusts or annuity trusts in its general endowment fund will not jeopardize the exempt status of the charitable remainder trusts or the donor's charitable contribution deduction because such investment does not affect the status of the charitable remainder trusts.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 73-571 is amplified.